

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
vs.)	
)	Criminal Action
LYNCH E. ARTHUR,)	No. 12-10025-DJC
Defendant.)	
)	
)	
)	

SENTENCING HEARING

BEFORE THE HONORABLE DENNIS J. CASPER
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
John J. Moakley U.S. Courthouse
Boston, Massachusetts 02210
June 28, 2013
2:00 p.m.

* * * *

CATHERINE A. HANDEL, RPR-CM, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way, Room 5205
Boston, MA 02210
(617) 261-0555

APPEARANCES:

For the Plaintiff:

UNITED STATES ATTORNEY'S OFFICE
(By: AUSA Kenneth G. Shine, and
AUSA Robert E. Richardson)
John J. Moakley Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210

For the Defendant:

FEDERAL DEFENDER'S OFFICE
(By: Timothy G. Watkins, Esq.)
51 Sleeper Street
Fifth Floor
Boston, MA 02210

ALSO PRESENT:

FEDERAL PROBATION SERVICES
By: Craig A. Orze
John J. Moakley Courthouse
One Courthouse Way, Suite 1200
Boston, MA 02210-3027

P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Dennis J. Casper, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on June 28, 2013.

The defendant, Lynch E. Arthur, is present with counsel. Assistant United States Attorneys Kenneth G. Shine and Robert E. Richardson are present.)

COURTROOM DEPUTY CLERK HOURIHAN: Criminal Action No. 12-10025, United States versus Lynch Arthur. Would counsel please state your name for the record.

MR. SHINE: Your Honor, good afternoon. Kenneth Shine for the United States Government.

MR. RICHARDSON: Also Robert Richardson for the United States. Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. WATKINS: Good afternoon, your Honor. Tim Watkins, Federal Defender Office on behalf of Lynch Arthur.

THE COURT: Afternoon counsel. Good afternoon, Mr. Arthur.

THE DEFENDANT: Good afternoon.

THE COURT: Counsel, I know that we're here for sentencing. Before we begin, I just want to make sure that I have everything, all the written materials you wanted me to

1 review: The presentence report as revised, as revised June
2 21st; the sentencing memo on Mr. Arthur's behalf filed June
3 24th; and the government's sentencing memo filed June 14th.

4 MR. WATKINS: I think that's everything.

5 MR. SHINE: That would be it, your Honor.

6 THE COURT: Okay.

7 Mr. Watkins, have you had an opportunity to go over
8 the PSR with Mr. Arthur?

9 MR. WATKINS: I have.

10 THE COURT: Okay. And other than the objections that
11 were noted in the addendum, which I think Probation addressed,
12 are there any other objections to the factual contents?

13 MR. WATKINS: There is not.

14 MR. SHINE: There is not, your Honor.

15 THE COURT: Okay. In terms of the Base Offense
16 calculation, I think there may have been some objections to
17 the Base Offense calculation other than the Career Offender
18 calculation, but I think the parties are in agreement that the
19 Career Offender category applies here. Is that the
20 government's position?

21 MR. SHINE: The government initially filed some
22 objections and then since withdrawn them and then with the
23 Career Offender Guideline kicking in, it becomes moot.

24 THE COURT: Mr. Watkins, is that your position as
25 well?

1 MR. WATKINS: That is accurate, your Honor. As the
2 Court has identified, it was the alternative calculation,
3 really, that was at issue and I think the Probation Department
4 did get it right here.

5 THE COURT: Okay. Well, given that the parties
6 recognize that the Career Offender Guideline provision applies
7 under the advisory Guidelines, I will adopt the offense level
8 calculation, Base Offense Level of 32, with three levels off
9 for acceptance, for a Total Offense Level of 29, and Category
10 VI which applies as the operation of the Career Offender
11 Guideline. As I understand it, counsel, that leads to an
12 advisory Guideline Sentencing Range of 262 months to 327
13 months. As to Counts 1 and 3, one to three years of
14 supervised release, and as to Count 2, two to five years of
15 supervised release, a \$250,000 fine and a total of \$300
16 special assessment.

17 Counsel, my memory is that the money stolen was
18 recovered. So, there's no restitution.

19 MR. SHINE: That's correct, your Honor.

20 THE COURT: Mr. Shine, I'll hear the government's
21 recommendation.

22 MR. SHINE: \$664 and some change, that's why we're
23 here today. Lynch Arthur is a violent career criminal in the
24 literal, if not statutory, sense. Arthur and his co-defendant
25 were arrested and now convicted, following a brazen gutless

1 armed robbery of the Metro PCS store on October 31st, 2011.

2 This Court has had the benefit of hearing the facts
3 of this matter having presided over a four-day motion to
4 suppress and a five-day trial with the co-defendant, Ronald
5 Brown. The facts as outlined in the PSR are generally not in
6 dispute. So, I won't need to restate them. I will, however,
7 highlight some of the issues because I believe they will help
8 the Court to understand and appreciate the government's severe
9 sentencing recommendation.

10 On October 31st, Lynch Arthur and Ronald Brown, both
11 armed with loaded semi-automatic weapons, entered and robbed
12 the Metro PCS store in Copley Square.

13 This was not a random act. It was not a smash-and-
14 grab or some drug-fueled endeavor, which, unfortunately, this
15 Court sees far too often. This was cold, calculated venture.
16 Both robbers wore dark glasses and dark clothing. They wore
17 hats to obscure their identities. Lynch Arthur donned white
18 work gloves to hide his fingerprints. Ronald Brown,
19 co-defendant, wore tape on his fingers.

20 As they entered the store, Lynch Arthur was seen
21 carrying a black nylon bag. They directed the clerk into a
22 back room. They displayed their handguns. And Lynch Arthur
23 removes duct tape, is observed on video duct taping the store
24 clerk, first her hands, then her feet. She's then placed on
25 the ground and her mouth is duct taped. The two individuals

1 continue to rob her and eventually leave commencing their
2 escape.

3 As they leave the store, the clerk is observed on
4 video getting to her feet. She collects herself and then
5 removes the tape from her hands. However, is unable to remove
6 the tape from her feet, and she's observed on video hopping to
7 the front door, as she locks the front door and contacts her
8 supervisors.

9 I have to suggest, your Honor, her hopping to the
10 front door with one of the more dramatic scenes during our
11 recent trial.

12 Eventually the Boston Police arrive and descriptions
13 of the individuals involved in the robbery go out. Lynch
14 Arthur and Ronald Brown leave the store on foot heading down
15 Moultrie Street towards the Shawmut T station. They turn on
16 to Seaborn Street and then on to Kenwood.

17 As they proceed down Kenwood, hearing now the
18 responding Boston police officers, they ditched the black
19 nylon bag now containing their weapons, the duct tape, and the
20 robbery proceeds, \$664 and some change. They dump it into a
21 blue recycle bin and continue removing -- and Brown continues
22 -- or starts removing clothing, dropping articles of clothing
23 in the nearby bushes.

24 Within minutes they're observed by Detective Timothy
25 Goldan who has received radio broadcasts, that after two

1 minutes of investigation the two are stopped, returned to the
2 Metro PCS where they're positively identified by the clerk,
3 Ms. Jessica Rodriguez.

4 I want to talk a little bit about Lynch Arthur.
5 Lynch Arthur is a Career Offender in the literal, if not
6 statutory, scheme. He is 41 years old. The PSR that was
7 prepared reflects that he's been arrested 13 times since the
8 age of 19. That's 22 years ago.

9 He was arrested in 1984 and convicted of unarmed
10 robbery. He was convicted.

11 He was arrested and convicted in 1991 with possession
12 of a firearm, possession of narcotics, receiving a sentence of
13 one year in prison.

14 He was arrested and convicted in 1991 again with
15 possession to distribute marijuana. On this case he received
16 another one year in prison.

17 He was arrested and convicted in 1992 with possession
18 of a firearm. He received one year in prison. He has had his
19 probation violated and was sentenced to an additional 18
20 months.

21 He was arrested and convicted in 1994 with possession
22 of marijuana, received a sentence of three months in prison.

23 He was arrested and convicted in 1995 with
24 distributing heroin in a school zone. He was received a jail
25 sentence of two and a half years in prison.

1 He was arrested and convicted in 2000 for possession
2 of narcotics, receiving a probationary term.

3 And, finally, in 2002, he was arrested and convicted
4 in the United States District Court of Maine of conspiracy to
5 distribute cocaine in excess of 50 grams. On that matter he
6 was sentenced to eleven and a half years in federal prison.
7 Upon his release, he was subject to supervised release. He
8 committed this offense while under the supervision of the
9 United States Probation Department.

10 By my calculations, since he turned 19, which was 22
11 years ago, Lynch Arthur has spent 19 of those years in prison,
12 almost his entire adult life.

13 As a result of the above convictions, he has been
14 classified as a Career Offender. Had this matter proceeded to
15 trial, he would be looking at a sentence of 360 months to
16 life. With acceptance of responsibility, that's reduced to a
17 range of 262 to 327 months. The government would be well
18 within its bounds to file an information pursuant 18 United
19 States Code 3559, which would have mandated a mandatory life
20 sentence for Mr. Arthur.

21 The facts of this case and Mr. Arthur's criminal
22 record would warrant such an action. We, however, have not
23 done that.

24 Let me turn a bit to the defendant's sentencing
25 memorandum where it seems to place the blame for this incident

1 entirely on his co-defendant, Ronald Brown. Do not let this
2 argument sway you. This will be Lynch Arthur's third gun
3 offense. This will be his second robbery offense.

4 Lynch Arthur participated in this gutless, cowardly
5 act as a participant. Lynch Arthur carried a black nylon bag
6 containing duct tape into the store. Lynch Arthur carried a
7 loaded .45 caliber ammunition into the store. Lynch Arthur
8 put on sunglasses. Lynch Arthur put on a hat to obscure his
9 identity. Lynch Arthur donned gloves to hide his fingerprints
10 he might have left, and Lynch Arthur removed a roll of duct
11 tape and Lynch Arthur duct taped the clerk in this case on her
12 hands, on her feet, and then placed her on the ground and duct
13 taped her mouth.

14 In the realm of matters which come before this Court,
15 this clearly must rank as one of the most severe. This was a
16 cold, calculated endeavor.

17 Under 18 United States Code, this Court must conduct
18 an analysis of criteria to formulate any sentencing issues.
19 This Court has had the benefit of observing the victim, the
20 clerk, in this case, not only during the motion to suppress
21 hearing, but during the trial. This Court is aware of the
22 impact on the fear, of the daily fear she has where she didn't
23 even want to look at this man for what he did to her.

24 This sentence must promote respect for the law. This
25 sentence must provide punishment for the offense and serve as

1 a deterrent to future criminal conduct. This sentence must
2 protect the public from further crimes of the defendant.

3 At no time during his life has Lynch Arthur
4 demonstrated any inclination or desire to stop his violent
5 criminal conduct. The only time he stopped committing these
6 crimes is when he's placed in prison. He has disregarded the
7 law. He has refused to conform his behavior to acceptable
8 societal norms. This sentence I'm asking the Court is
9 dictated by the defendant's own actions and decisions and it's
10 necessary to protect the public from the defendant and deter
11 similar conduct.

12 The government requests this Court impose a sentence
13 of 262 months, the low end of the advisory Guidelines, to be
14 followed by a period of five years of supervised release and
15 a mandatory special assessment of \$300. This is the right
16 thing to do. \$664 and some change, your Honor. Thank you.

17 THE COURT: Thank you, Mr. Shine. Mr. Watkins.

18 MR. WATKINS: Thank you, your Honor.

19 There really is no dispute on the facts and, indeed,
20 Mr. Arthur admitted fully to the facts and his participation.
21 There's no dispute as to the consequences, particularly as to
22 the teller who genuinely was fearful and continues to be
23 fearful and has those long-lasting consequences as a result of
24 being the victim.

25 For those reasons that I'm not asking for time

1 served. I'm not asking for five years or the seven-year
2 mandatory minimum. I have recommended and continue to
3 recommend to the Court a sentence of 130 months, just shy of
4 eleven years.

5 This is, as the Court heard, undisputed as to the
6 nominal application of the Guidelines. Mr. Arthur, indeed, is
7 a Career Offender, as determined by the Sentencing Commission,
8 but a Career Offender as a result of two completely non-
9 violent crimes, convictions, both resulting in a sentence of
10 imprisonment, but also where violence was completely not
11 present.

12 In the prior drug cases there's no occasion of a
13 firearm being used. There's no indication of any kinds of
14 violence associated with what was, in essence, petty drug
15 dealing. So, while he is, indeed, a Career Offender, it is in
16 a sense a different kind of Career Offender than the Court
17 might ordinarily see, certainly a different kind of Career
18 Offender than the government is arguing here, a person with a
19 nonstop record of violent crime. It's simply not true. The
20 Court has read through the presentence report. The Court can
21 make its own judgment on whether the government is correct.

22 The government also talks about the continuous nature
23 of Mr. Arthur's criminality. Again, the Court has the facts
24 and the Court has the presentence report.

25 What is notable is that Mr. Arthur completed 44

1 months of supervised release, nearly off of it, this last
2 federal conviction he had. Certainly not in any way to
3 minimize the additional culpability of committing a crime
4 while on supervised release, but, indeed, he faces sentencing
5 before Judge Zobel for the fact that he committed on that and
6 Judge Zobel will make her own determination about the severity
7 of that.

8 What is notable is that that is not a continuous --
9 it's not a record of continuous violent activity, but one who
10 is supervised and, indeed, is trying to do his best despite
11 the significant hurdles is -- I would say is an indication of
12 his maturity and the fact that he was, indeed, turning the
13 corner here.

14 THE COURT: Counsel, can I ask you, what would you
15 have me do with the fact that, if I recall correctly, he was
16 sentenced to 136 months in 2002?

17 MR. WATKINS: And this sentence is certainly
18 commensurate. It's a different kind of crime and a very
19 serious crime as the offense in 2002 was with drug dealing.
20 I'm not trying to minimize either of those, but that is a
21 reason why it's in excess of eleven years I'm recommending --
22 or almost eleven years here.

23 Notwithstanding the fact that while there is
24 psychological -- lingering psychological effects, this is a
25 case where there was no physical injury to the teller and a

1 case where the Sentencing Commission would say absent the
2 Career Offender, absent the 924(c), a sentence far lower than
3 that, 70 to 87 months would be appropriate. This is almost
4 twice what the Sentencing Commission would say is a reasonable
5 sentence, given many of the circumstances that are present
6 here.

7 So, I understand the Court's questions, how can one
8 go back. There are crimes and there are crimes. This is a
9 sentence of six months less. I've written how I got to that
10 particular outcome. Were the Court to go somewhat higher than
11 that, that would be appropriate. It would be within the range
12 of reasonable sentences here.

13 But I guess what I'm arguing here is 262 months
14 really results in an unreasonable sentence. The government
15 seems to argue that they are being the reasonable ones here,
16 all the ways they could have charged him, all of the ways that
17 the sentencing could have gone higher.

18 Oddly enough, one of the reasons it should be higher,
19 apparently, is because if he had gone to trial, it would be
20 360 to life. Well, he didn't. Unlike Mr. Brown, he did not.
21 He admitted freely before the Court his involvement here
22 unequivocally without any kind of plea agreement. So, I think
23 the government's thought that 360 to life is the proper
24 sentence really has no basis in reality.

25 Then the question becomes, really, is the 262-month

1 sentence the reasonable one. Well, that in itself is driven
2 by the government's decision to charge the 924(c) here,
3 knowing that Mr. Arthur would be subject to the Career
4 Offender provision. In essence, the government sets the
5 Guideline sentence here of 262 months on the low end.

6 So, I think where the government is talking about how
7 reasonable it's being, talking about the low end of the
8 Guideline, I suppose one could say that. One could also say
9 they're being unreasonable in the way they charged the case
10 because they could have ended up with a very, very substantial
11 sentence without charging that 924(c) count.

12 Really, at the end of the day, it comes back to what
13 is the reasonable sentence under §3553(a).

14 I've written at some length in the sentencing memo
15 and I don't want to repeat myself in there other than to say
16 this is a case where, according to the Sentencing Commission,
17 there's quite a wide range of sentences that could be
18 considered sufficient but not greater than necessary. For the
19 reasons the Court already elucidated and I've spoken of, I
20 think it would be unreasonable for the Court to come down as
21 far as 70 or 87 months because of the prior record.

22 By the same token, 130 months is a lot of time for
23 someone who is 41 years old. It will keep him in prison until
24 his early 50s. All the studies we have talk about the risk of
25 recidivism and how it tapers off with age. I think that in

1 conjunction with the fact that notwithstanding this incident
2 that he got into with Mr. Brown, Mr. Arthur was already
3 showing signs of the tapering of the recidivism. I think
4 another ten years where he gets out in his early 50s will be
5 more than enough to ensure. If that weren't the case, the
6 Court has a range of supervised release it can impose. I,
7 like the government, have asked for the maximum five years. I
8 think that would be appropriate here.

9 It is clear that Mr. Arthur needs help to get over
10 the kinds of issues that -- lingering from his childhood,
11 physical, cognitive, substance abuse, and will need those
12 kinds of help all of his life. Sometimes it works. Other
13 times it ends up horrifically, as it has here, but that does
14 not mean it's time to throw away the key on Mr. Arthur.

15 Quite the opposite. It means that there are ways to
16 help him and that once he gets into his 50s and is provided
17 with those kinds of -- that kind of help by the Probation
18 Department, in fact, he can get his life on track, can be the
19 kind of father that he was denied when he was a child.

20 Your Honor, as far as the facts of the case, I would
21 note the government is quite correct on the things that Mr.
22 Arthur did. I am, I think, the only one in the room who has
23 not heard all of the evidence during the motion to suppress.
24 The Court recalls Ms. Byrne from our office conducted that.
25 The Court had the added advantage of having seen the trial of

1 Mr. Brown. So, nothing I can say can really add too much to
2 any of that.

3 I think the Court can draw its own conclusions about
4 who was the motivating factor in this particular robbery. I
5 think the Court can draw its own conclusions about how
6 premeditated this was. Certainly some planning came into it,
7 but there's planning and there's planning. The Court, of
8 course, has presided over a trial where there is real, real
9 planning and real, real contemplation. I think the Court can
10 make its own decision here about whether those kinds of
11 factors warrant a sentence in excess of eleven years.

12 For all of those reasons, your Honor, I would ask the
13 Court to consider a sentence of 130 months or some sentence
14 intermediate to that that satisfies all the §3553(a) factors.
15 I am quite certain that Mr. Arthur, when he does come out,
16 whether it's in his early 50s or his mid 50s, is not going to
17 be a man who is in any position to recidivate.

18 THE COURT: Thank you, counsel.

19 Mr. Arthur, you're not required to, but if you would
20 like to address me now, I'll hear you now.

21 THE DEFENDANT: Yes. Thank you.

22 First, I'd just like to apologize to the victim for
23 any type of suffering that I caused the victim and the family
24 and harm and stress. I'd just like to apologize from the
25 bottom of my heart.

1 And I'd also like to apologize to my family for
2 putting them through stress and leaving my kids fatherless
3 again. And I'd also like to apologize for being a burden on
4 my parents. And I would like to apologize to the Court for
5 breaking the law and wasting the Court's time.

6 Since I have been locked up, I have done a lot of --
7 a lot of soul searching and I have definitely become a better
8 person now. I've really had time to think about the different
9 things that I could do with myself better instead of getting
10 in trouble and then what I am going to -- what I am going to
11 do while I'm locked up. Completely -- I'm going to completely
12 accomplish all my goals. So I know that when I come home, I
13 will be ready for the work world and anything else because
14 that's the way for me succeeding. Thank you.

15 THE COURT: Thank you.

16 Mr. Shine, was there a Victim Impact Statement? Is
17 this a --

18 MR. SHINE: There was not, your Honor.

19 THE COURT: Okay. Counsel, Mr. Arthur, I'm going to
20 take a brief recess.

21 COURTROOM DEPUTY CLERK HOURIHAN: All rise. Court is
22 in recess.

23 (Recess taken.)

24 COURTROOM DEPUTY CLERK HOURIHAN: Please be seated.

25 THE COURT: I thank counsel for their arguments today

1 and their written papers on the parties' behalf.

2 Mr. Arthur, I must consider, and I have considered, a
3 number of factors in determining a reasonable sentence for the
4 crimes that you pled guilty to. And you can remain seated
5 until I formally impose sentence. I just want to explain my
6 reasons to you, sir.

7 I must and I have considered the nature and
8 circumstances of your crimes, your personal history and
9 background, the advisory Guideline Sentencing Range, and the
10 need for any sentence I impose to do several things:

11 To promote respect for the law, reflect the
12 seriousness of the offenses here, provide just punishment and
13 adequate deterrence to you and to others, and to avoid
14 unwarranted sentencing disparities, all of the factors under
15 Title 18, United States Code 3553(a).

16 As always, I remain mindful of the fact that I must
17 impose a sentence that is sufficient but not greater than
18 necessary to effect the goals of sentencing.

19 Let me begin with the crimes that you committed here,
20 and I won't rehash all of the facts. You heard Mr. Shine
21 summarize them as reflected in the presentence report, and I'm
22 certainly well aware of them from the testimony I heard at
23 your suppression hearing and that I heard at Mr. Brown's
24 recent trial.

25 Let me just say that this was an armed robbery that

1 occurred on Halloween, if I recall correctly. That both you
2 and Mr. Brown were carrying firearms, which became known and
3 you made known to the victim, Ms. Rodriguez, in the course of
4 the robbery.

5 The victim, the store clerk, was taken into the back
6 room, forced into the back room, which we saw in the video
7 during the trial, to get cash, and that you bound the victim
8 up on her hands and feet and her mouth and left her on the
9 ground.

10 I think it's fair to say and I think you acknowledge
11 to a certain degree in your statement today that you put her
12 in great fear and I saw great fear exhibited by her on the
13 stand during her testimony before me.

14 I know Mr. Shine referred to the planning involved in
15 this case. I can't say -- as Mr. Watkins I think was
16 essentially arguing to me, I can't say that this was the most
17 sophisticated scheme or that there was great planning
18 involved, but there certainly was some planning involved.

19 I think it's a fair inference that a certain time of
20 day was picked when there were less customers around. You
21 brought the necessary tools to effectuate the robbery, not
22 just the guns, but the duct tape, and you and Mr. Brown were
23 quick on your feet when customers came into the store when you
24 were still in the back with the victim.

25 I certainly acknowledge, as Mr. Watkins has pointed

1 out, that there was no physical injury that you caused to the
2 victim, but I think it's fair to say that there was serious
3 psychological harm, evidenced by her demeanor in court and the
4 circumstances of the robbery.

5 I would also say that the store clerk was not the
6 only victim here. Certainly, to a lesser degree, the store
7 itself was a victim, but I think others in the community were
8 victims as well, the many law-abiding citizens in the
9 community, who I'm sure were alarmed by what the government
10 has characterized as a brazen act in broad daylight.

11 Mr. Arthur, these are serious crimes, not just the
12 threatened use of force here, the threat of violence that the
13 victim reasonably feared here with the use and the carrying of
14 the firearms that you used to effectuate the robbery.

15 Now, certainly, Mr. Arthur, the crimes, the nature of
16 them are not the only factors that I've considered. I've
17 considered your personal background, which is also summarized
18 in the presentence report. I think it's fair to say that you
19 grew up in an abusive household while your father was still a
20 part of it and that he eventually left your home and your
21 family.

22 You continued to be raised by your mother, who I
23 think, in your words, was a strict disciplinarian, but that
24 didn't keep you from getting into the trouble that you got
25 into, beginning at a young age. I know that you've had some

1 learning challenges in school and left school in the tenth
2 grade, if I'm recalling correctly.

3 THE DEFENDANT: That's right.

4 THE COURT: And that some of your learning challenges
5 may have gone undiagnosed and untreated, rather, for a period
6 of time. I know you've had some health issues and your
7 treatment for certain conditions, including depression, did
8 not start until well into your adulthood.

9 And I also recognize that you had substance abuse
10 issues, beginning at a very young age, involving alcohol, then
11 marijuana and then cocaine. I know you've received some
12 treatment during a previous incarceration, but I take note of
13 all of those facts.

14 Mr. Arthur, if I recall correctly, you're now 41
15 years old.

16 THE DEFENDANT: 42.

17 THE COURT: 42.

18 And I think Mr. Shine's characterization of your
19 criminal record is not far off. Focusing on your adult
20 record, I think there are entries from age 19 through age 29
21 that reflect both possession of firearms and discharge. That
22 was Paragraph 55 in the PSR.

23 When you were 19 years old, if I recall correctly,
24 you received further incarceration because of a probation
25 violation. You had another possession of a firearm without a

1 license outside of your high school, what had been your high
2 school, at age 21. That's Paragraph 57.

3 Paragraph 59, you were convicted of conspiracy to
4 violate controlled substances laws at age 24 for a drug sale
5 involving heroin. You received some disciplinary reports
6 during your incarceration.

7 And, most recently, as Mr. Shine alluded to,
8 Paragraph 61, you were convicted in another federal court in
9 the District of Maine for conspiracy to possess with intent to
10 distribute both cocaine and cocaine base, for which you
11 received a 136-month sentence. I know you that completed a
12 great majority of that, of your supervised release. If I
13 recall correctly, 44 months of a 60-month --

14 THE DEFENDANT: Yes.

15 THE COURT: -- period of supervised release without
16 incident, but that you committed the instant crime while you
17 were still on supervised release.

18 Mr. Arthur, you have a lengthy criminal record
19 involving some serious crimes and I certainly -- I do commend
20 you for the work that you're doing during your current
21 incarceration and your compliance at least for a substantial
22 portion of your supervised release on the matter out of the
23 District of Maine, but I'm very concerned about what I think
24 this current set of crimes represents, which is an escalation
25 of a threat of violence and the involvement of a firearm.

1 Here, involving a robbery, involving a victim, and involving
2 the threat of violence and force.

3 I'm also concerned -- as my question to your counsel,
4 Mr. Watkins, suggested, I'm very concerned that this crime
5 followed a 136-month sentence, over a ten-year sentence in
6 federal prison that did not deter your willingness to
7 participate in criminal activities.

8 It's fair to say that the nature of your criminal
9 history and the timing of sequence of this crime are what --
10 in this Court's estimation is what's driving your sentence.

11 There are some facts in your PSR that I previously
12 cited in mitigation and some mitigation here in terms of your
13 history of long untreated learning disabilities, the
14 Tourette's Syndrome that was also referenced.

15 I think there were many opportunities for
16 intervention, both educational and otherwise, that were missed
17 here. Mr. Arthur, as I said, I take some note in recognition
18 of the progress that you've made during your current
19 incarceration, where I understand there had not been any
20 disciplinary reports.

21 THE DEFENDANT: No, none.

22 THE COURT: Mr. Watkins?

23 MR. WATKINS: Yes.

24 THE COURT: And during your past supervised release.
25 That having been said, I agree with the government

1 and Mr. Shine that a substantial sentence is warranted here
2 based on all of the factors I have considered.

3 I cannot say that 262 months, even at the low end of
4 the advisory Guidelines Sentencing Range, is appropriate here,
5 Mr. Shine, post *Booker*. I think I have to make a more
6 searching inquiry to determine a sentence that's reasonable
7 and not accept 262 months to 327 months is per se reasonable.

8 But I also, Mr. Watkins -- as I think you can
9 probably understand, I disagree that a sentence of 130 months
10 is appropriate, not just in light of the District of Maine
11 sentence of 130 months, but just in consideration of all of
12 the factors here.

13 For all of these reasons, I'm going to impose a
14 sentence that is somewhat under the government's
15 recommendation, and I'm going to impose a sentence of 228
16 months, which is a very substantial sentence. I recognize,
17 Mr. Arthur, it's still at or near the minimum of 240 months
18 for Count 1, the Hobbs Act robbery count, which I really think
19 is the lead and driving count here, and it's in recognition
20 both of the seriousness of the crime, the seriousness of the
21 criminal record, and all of the other factors that I've
22 referenced here, and is in full acknowledgment as well of the
23 impact on the victim and all of the goals of sentencing.

24 I also think that it's not greater than necessary,
25 Mr. Watkins, for all of the factors that I've considered. For

1 that reason, I will impose a sentence of 228 months.

2 Mr. Orze, my intention, as I understand it -- and I'm
3 going to ask counsel in a moment if they have any objections
4 to the sentence, but let me just explain how I intend to
5 impose it.

6 I intend to issue a judgment for 228 months, a term
7 consisting of 144 months on Count 1, and 120 months on Count
8 3, to be served concurrently, and 84 months to follow
9 consecutively on Count 2, and I think that both complies with
10 the statutory maximums as to each count, but amounts to 228
11 months. Do you have any --

12 PROBATION OFFICER ORZE: Yes, your Honor. That's
13 correct.

14 THE COURT: Counsel, I will also impose a five-year
15 supervised release, as was recommended by both parties. No
16 fine. And a mandatory \$300 special assessment.

17 Mr. Shine, do you want to be heard?

18 MR. SHINE: No, your Honor. Thank you.

19 THE COURT: Okay. And, Mr. Shine, do you agree with
20 the way in which I'm planning to impose the sentence in terms
21 of the counts?

22 MR. SHINE: I agree with the way in which you impose
23 it.

24 THE COURT: Okay. Mr. Watkins, do you want to be
25 heard or have any objections to the sentence or how I intend

1 to impose it?

2 MR. WATKINS: I've asked for 130 months. As far as
3 the procedural way, I have no objection.

4 THE COURT: Counsel, Mr. Shine, were there any
5 particular conditions of supervised release? I have
6 recommendations about substance abuse counseling and mental
7 health treatment and participation in vocational service
8 training, but anything other than, other than the mandatory
9 conditions?

10 MR. SHINE: No. Based on the length of the sentence,
11 it would be difficult for him to participate in 228 months,
12 but Probation is flexible, I'm sure.

13 THE COURT: Mr. Watkins, anything in terms of the
14 conditions?

15 MR. WATKINS: No, your Honor.

16 THE COURT: Mr. Arthur, I am now going to ask you to
17 raise.

18 Mr. Arthur, pursuant to the Sentencing Reform Act of
19 1984 and having considered the sentencing factors enumerated
20 in Title 18 United States Code 3553(a), it is the judgment of
21 this Court that you are hereby committed to the custody of the
22 Bureau of Prisons to be imprisoned for a term of 228 months.

23 This term consists of terms of 144 months on Count 1,
24 120 months on Count 3 to be served concurrently, and 84 months
25 to be served on Count 2 which is to be served consecutively to

1 the term of imprisonment on Counts 1 and 3.

2 I'll make a judicial recommendation that you
3 participate in substance abuse treatment while in BOP custody,
4 and I also recommend that you participate or continue to
5 participate in educational programs and vocational training
6 during your time in prison.

7 Upon release from imprisonment, you shall be placed
8 on supervised release for a term of five years. This term --
9 and, Mr. Orze, can I do it concurrently on all of the counts
10 or I think I have to do it -- excuse me. I have to do it as
11 to Count --

12 PROBATION OFFICER ORZE: Three years on Count 1 and
13 five years on Count 2.

14 THE COURT: Okay. I will impose five years on Count
15 2 and three years on Counts 1 and 3 to be served concurrently
16 with a five-year term of supervised release.

17 Within 72 hours of release from custody of the BOP,
18 you shall report in person to the district to which you are
19 released.

20 I'm not imposing a fine, given my determination that
21 you don't have a financial ability to pay one.

22 In terms of your conditions of supervised release,
23 you shall not commit another federal, state or local crime and
24 shall not illegally possess a controlled substance. You shall
25 refrain from any unlawful use of controlled substance. You

1 shall submit to one drug test within 15 days of release from
2 imprisonment and at least two periodic drug tests thereafter,
3 not to exceed 104 tests per year, as directed by Probation.
4 You shall submit to the collection of a DNA sample, as
5 directed by Probation, and you shall comply with all of the
6 standard conditions that have been adopted by the Court and
7 will be explained in my judgment.

8 In addition, you're prohibited from possessing a
9 firearm, destructive device or other dangerous weapon. You're
10 to participate in a program for substance abuse counseling and
11 for mental health treatment, as directed by Probation.

12 As part of -- God bless you. As part of any
13 substance abuse counseling, you may also be subject to random
14 drug testing. As to either of these treatment programs, you
15 shall be required to contribute to the cost of service based
16 on your ability to pay or the availability of third-party
17 payment.

18 You shall also participate in any vocational service
19 training programs or educational programs, as directed by
20 Probation, and you may also be required to contribute to the
21 payment for that programming based on your ability to pay or
22 third-party payment. You're also ordered to pay a \$300
23 special assessment.

24 You may be seated.

25 That will be the judgment of the Court.

1 Counsel, other than advising Mr. Arthur of his
2 appellate rights, any matters to address?

3 MR. SHINE: There was a forfeiture allegation, I
4 believe, in the judgment.

5 THE COURT: Okay. Is there a proposed order?

6 MR. SHINE: Our forfeiture unit will forward
7 something down to the Court.

8 THE COURT: I'll review it once I receive it,
9 counsel.

10 At this point other than advising Mr. Arthur of his
11 appellate rights, are there other matters to address?

12 MR. SHINE: No other matters, your Honor. Thank you.

13 THE COURT: Mr. Orze?

14 PROBATION OFFICER ORZE: No, your Honor.

15 THE COURT: Mr. Watkins?

16 MR. WATKINS: No, your Honor.

17 THE COURT: Mr. Arthur, I must also advise you that
18 you can appeal your conviction if you believe your guilty plea
19 was unlawful or involuntary or if there's some other
20 fundamental defect in the proceeding that was not waived by
21 your guilty plea.

22 You also have the right to appeal your sentence,
23 particularly if you think the sentence was contrary to law.

24 If you're unable to pay the costs of appeal, you may
25 ask permission to have those costs waived and appeal without

1 paying. You must file any Notice of Appeal within 14 days
2 after the entry of judgment. If you request, the Clerk will
3 immediately prepare and file a Notice of Appeal on your
4 behalf. Thank you.

5 MR. SHINE: Thank you, your Honor.

6 COURTROOM DEPUTY CLERK HOURIHAN: All rise.

7 (Adjourned, 3:05 p.m.)
8
9

10 C E R T I F I C A T E

11 I, Catherine A. Handel, Official Court Reporter of the
12 United States District Court, do hereby certify that the
13 foregoing transcript, from Page 1 to Page 31, constitutes to the
14 best of my skill and ability a true and accurate transcription of
15 my stenotype notes taken in the matter of Criminal Action No.
16 12-10025-DJC, United States of America versus Lynch Arthur.
17

18 August 29, 2013
19 Date

/s/Catherine A. Handel
Catherine A. Handel, RPR-CM, CRR
20
21
22
23
24
25